

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of US Telecom for Forbearance)	WC Docket No. 12-61
Under 47 USC 160(c) from Enforcement)	
Of Certain Legacy Telecommunications)	
Regulations)	

**REPLY COMMENTS OF THE PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

Pursuant to the Federal Communications Commission's ("FCC") Public Notice¹ seeking comment on the United States Telecom Association's ("US Telecom") Petition for Forbearance,² the Public Service Commission of the District of Columbia ("DC PSC") respectfully files limited reply comments. The DC PSC opposes granting forbearance from the reporting requirements in 47 C.F.R. § 51.333 (Category 9) as well as 47 C.F.R. § 63.60, 63.61, 63.62, 63.63, 63.71, and 63.90 (Category 10). Without these requirements, state commissions will be unaware of network changes and discontinuances of service that will directly affect consumers, hindering state commission efforts to educate and assist them.

THE FORBEARANCE STANDARD REQUIRES THAT CONSUMERS BE PROTECTED.

47 U.S.C. § 160(a) permits the FCC to forbear from applying any statutory provision or regulation as long as three conditions are met: enforcement of the statutory provision or regulation "is not necessary to ensure that the charge, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and not unjustly or unreasonably discriminatory;" enforcement of the statutory provision or regulation is not necessary to

¹ Public Notice, Petition of US Telecom for Forbearance Under 47 USC 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61, rel. March 8, 2012.

² Petition of US Telecom for Forbearance Under 47 USC 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61, filed February 16, 2012.

protect consumers; and forbearance is in the public interest.³ As part of the public interest analysis, the FCC is to evaluate the effects of forbearance on competition.⁴ The DC PSC is primarily concerned with the second prong of the forbearance standard as it relates to US Telecom's requests to forbear from 47 C.F.R. § 51.333 and 47 C.F.R. § 63.60 *et seq.*

THE NOTICE REQUIREMENTS IN 47 C.F.R. § 51.333 PROVIDE THE ONLY NOTICE TO THE DC PSC REGARDING NETWORK CHANGES INCLUDING THE RETIREMENT OF COPPER LOOPS.

47 C.F.R. § 51.325 through 51.335 contain the procedures to provide public notice regarding any changes to an incumbent local exchange carrier's ("ILEC") network that will affect a competitor's performance or ability to provide service, interoperability between competitive networks, customer premises equipment, or retirement of copper loops.⁵ Under the current rules, before an ILEC can retire copper loops, the FCC must issue a public notice regarding the proposed retirement and seek comments for a period of 90 days, although if no objections have been filed by the 90th day, the proposed retirement shall be deemed approved.⁶ US Telecom seeks forbearance from the requirements of 47 C.F.R. § 51.333 that require the issuance of an FCC public notice of the proposed copper loop retirement, arguing that the time lag between the filing of an ILEC notice of the retirement and the issuance of the FCC public notice on the ILEC notice is usually too long to provide certainty in a rapidly changing competitive market.⁷ The DC PSC notes that it is the issuance of the FCC public notice that commences the period for affected telecommunications carriers to file objections to the proposed copper loop retirement, so it is unclear whether there would be any ability to object to such retirements if the FCC ceased issuing the public notices pursuant to 47 C.F.R. § 51.333.

³ 47 U.S.C. § 160(a).

⁴ 47 U.S.C. § 160(b).

⁵ 47 C.F.R. § 51.325(a) (2011).

⁶ 47 C.F.R. § 51.333(b)(2) (2011). This section also provides procedures for objecting to the proposed copper loop retirement.

⁷ US Telecom Petition at 56-59.

The issuance of the FCC public notice also provides state commissions notice of proposed retirement of copper loops, which will directly affect the consumers in areas where copper loops are retired. The DC PSC is in particular need of these FCC public notices; any proposed retirement of copper loops in the District of Columbia by the ILEC, Verizon Washington, DC Inc. ("Verizon DC"), would implicate one of the terms of settlement agreement approved as part of the ILEC's most recent price cap plan proceeding.⁸ In the settlement agreement, Verizon DC committed to maintain the "copper infrastructure in use and serving customers."⁹ Unless the DC PSC has notice of proposed copper retirements, it may be very difficult for the DC PSC to enforce this term of the settlement agreement because it will not know what copper infrastructure is still in use in the District of Columbia. The DC PSC cannot protect consumers without this knowledge.¹⁰ The DC PSC objects to forbearance from the requirements of 47 C.F.R. § 51.333.¹¹

THE FCC SHOULD NOT FORBEAR FROM THE SERVICE DISCONTINUANCE APPROVAL REQUIREMENTS SET FORTH IN 47 C.F.R. § 63.60 ET SEQ.

47 U.S.C. § 214 requires FCC approval before any telecommunications carrier can discontinue, reduce, or impair service to a community or part of a community.¹² To implement this statutory provision, the FCC adopted 47 C.F.R. § 63.60 *et seq.* to establish procedures for obtaining FCC approval for a discontinuance of service. As part of this process, the telecommunications carrier must notify

⁸ *Formal Case No. 1057, In the Matter of Verizon Washington, DC Inc.'s Price Cap Plan 2007 for the Provision of Local Telecommunications Services in the District of Columbia*, Joint Motion for Approval of Unanimous Settlement, filed March 13, 2008.

⁹ Joint Motion, Exhibit B at 2 (Term 9).

¹⁰ The DC PSC has recently opened a proceeding to investigate the quality of Verizon DC's infrastructure. One of the issues in this proceeding is to determine how Verizon DC is maintaining its copper infrastructure. *See, Formal Case No. 1090, In the Matter of the Investigation into the Reliability of Verizon Washington, DC's Telecommunications Infrastructure*, Order No. 16692 at 4, ¶ 13, rel. January 26, 2012.

¹¹ The DC PSC supports the comments of the California Public Utility Commission as they relate to this issue. *See*, Comments of the California Public Utilities Commission and the People of the State of California on Petition for Forbearance of the United States Telecom Association, WC Docket No. 12-61, filed April 9, 2012.

¹² 47 U.S.C. § 214(a).

consumers and state commissions of the proposed discontinuance of service.¹³ Additional procedures address the filing of objections.¹⁴ US Telecom requests forbearance from many of these approval requirements if a broadband provider seeks to discontinue services provided over other, older technologies.¹⁵ US Telecom argues that in cases where broadband services are replacing legacy services, there is no loss of telecommunications service, so FCC approval is unnecessary.¹⁶ The DC PSC disagrees. Broadband telephone service is not the same as traditional telephone service, since broadband service is not regulated by state commissions. Consumers have no recourse to state commissions if they have concerns about their telephone service offered through broadband services. Additionally, many legacy services such as basic local residential service or basic single line business service are not offered by broadband service providers, so they would not typically be replaced in a conversion to broadband service.¹⁷ Without prior FCC approval of the discontinuance of legacy offerings, there will be no ability to protest loss of legacy service, which some consumers prefer. The DC PSC agrees with the New York State Public Service Commission that Lifeline and other basic legacy service offerings may be adversely affected if providers cease offering traditional telephone services in favor of broadband telephone services.¹⁸ The FCC should continue to require telecommunications carriers to obtain approval before substituting broadband service for traditional telephone service.

The DCPSC appreciates the opportunity to submit reply comments in this proceeding.

¹³ 47 C.F.R. § 63.71(a) (2011).

¹⁴ 47 C.F.R. § 63.71(b) and 47 C.F.R. § 63.90(a) (2011).

¹⁵ US Telecom Petition at 59. US Telecom indicates that it will continue to notify customers and the FCC, omitting state commissions from its commitment. US Telecom Petition at 59. The DC PSC strongly objects to any elimination of the current requirements to notify state commissions of service discontinuance.


¹⁶ US Telecom Petition at 60.

¹⁷ Indeed, due to the lack of jurisdiction over broadband services, state commissions could not compel the offering of such legacy basic services.

¹⁸ Comments of the New York State Public Service Commission at 2-3, Docket No. 12-61, filed April 9, 2012.

Respectfully submitted,

**PUBLIC SERVICE COMMISSION
of the DISTRICT OF COLUMBIA**

By: 
Richard A. Beverly, General Counsel
Lara Howley Walt

1333 H Street, N.W.
Suite 200, West Tower
Washington, D.C. 20005
202-626-5100

Its Attorneys

April 24, 2012